

**REMARKS**

Claims 45-80 are pending.

The specification has been amended to include the updated reference to the parent application.

Acknowledgement of the applicants' claim to domestic priority is requested in the Examiner's next Action.

Acceptance of the previously-filed formal drawings in the Examiner's next Action is requested along with return of an initialed copy of the PTO 1449 Form filed October 15, 2001, pursuant to MPEP § 609.

The applicants elect, with traverse, the subject matter of the Examiner's Group II for further prosecution in the above.

The applicants submit however that claims 70-76 of the Examiner's Group II also correspond to the Examiner's Group I as claims 70-76 define further embodiments of the disclosed invention which are not believed to involve and/or define "a method of assaying a sample for an activity comprising peptides, and enzymes" (i.e., the Examiner's Group II) to the exclusion of "a method of assaying a sample for an activity comprising nucleic acids" (i.e., the Examiner's Group I).

The restriction requirement is traversed and reconsideration and withdrawal of the restriction requirement are requested, at least with regard to the requirement to elect between the subject matter of the Examiner's Groups I and II, for any of the following reasons. Consideration of the following in this regard is requested.

Initially, the Examiner is urged to appreciate that the specification defines "enzyme" at page 16 to include peptides and nucleic acids. The Examiner's reference therefore to assaying an activity "comprising peptides, and enzymes" in defining the subject matter of Group II is therefore confusing. Clarification is requested in the event the restriction requirement is maintained.

Moreover, the Examiner's reference in defining the subject matter of the Groups I and II as a method of assaying "for an activity comprising nucleic acids" (Group I) or "an activity comprising peptides" (Group II) is unclear. Specifically, the applicants are uncertain if, in referring to "nucleic acids" and

"peptides", the Examiner is referring to an activity that acts on substrates wherein the substrates are nucleic acids or peptides. Alternatively, the Examiner may be referring to nucleic acids or peptides having an activity, such as peptide enzymes or catalytic nucleic acids which act on a variety of substrates. For the purpose of being responsive to the Office Action of October 2, 2003, the applicants presume the broadest interpretation, i.e., that the elected Group II includes an activity that acts on substrates wherein the substrates are peptides and peptides having an activity, such as peptide enzymes, which act on a variety of substrates, in the absence of clarification from the Examiner to the contrary. Clarification is requested however in the event the restriction requirement is maintained and/or the Examiner indicates that the applicants' interpretation is incorrect.

Moreover, the Examiner is requested to allow the applicants a further opportunity to make an election in the event the restriction requirement is maintained and the applicants have misinterpreted the subject matter of the Examiner's indicated Groups.

The restriction requirement should also be withdrawn, at least with regard to the subject matter of the Examiner's Groups I and II as the Examiner has failed to indicate where the specification discloses that the subject matter of the Examiner's Groups I and II are not capable of being used together, as apparently required by MPEP §§ 806.04 and 808.01, cited by the Examiner on page 2 of the Office Action dated October 2, 2003, as the basis for the restriction requirement (i.e., "Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions or different effects." (emphasis added)). The Examiner's statement of the "modes of operation with different end results" as between the subject matter of the Examiner's Groups I and II is again not understood as Group II is indicated by the Examiner as "resulting" in the detection of the activity of a "peptide or an enzyme" as opposed to Group I which "results" in detecting the activity of "a nucleic acid." As noted above however, the specification defines enzymes as including peptides and nucleic acids, such that the Examiner's basis for requiring restriction, at least with regard to restriction between Groups I and II, is unfounded and unjustified.

Reconsideration and withdrawal of the restriction requirement, at least with regard to the Examiner's Groups I and II, are requested, along with a favorable Action on the merits of the claimed invention, such as all of claims 45-76.

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**Serial No. 09/976,437**

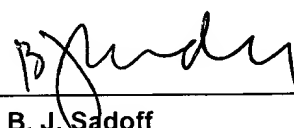
Alternatively, the Examiner is requested to provide a further Action, with a more definite statement of any restriction requirement, allowing the applicants to elect subject matter for further prosecution.

The Examiner is requested to contact the undersigned in the event anything further is required for responding to the Office Action of October 2, 2003.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
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